

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Wendell Dwayne O'Neal,

Civil No. 12-2549 (DWF/JJG)

Plaintiff,

v.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

The City of New Brighton; Hughes &
Costello Law Firm; Unknown Vehicle
Owner, Mark, Law Clerk, jointly
and as individuals; and Dustin
Bengston, Police Officer,

Defendants.

This matter is before the Court upon Plaintiff Wendell Dwayne O'Neal's ("Plaintiff") objections to Magistrate Judge Jeanne J. Graham's December 5, 2012 Report and Recommendation, which recommends that Plaintiff's Motions for Temporary Injunctive Relief be denied.

The Court has conducted a *de novo* review of the record, including a review of the arguments and submissions of the parties, pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b). The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference for purposes of Plaintiff's objections.

Having carefully reviewed the record, the Court concludes that Plaintiff's objections offer no basis for departure from the Report and Recommendation. In

particular, Plaintiff argues that he should be permitted to file a second amended complaint. (*See* Doc. No. 25 at 3.) Plaintiff does not appear to object to the report and recommendation with respect to Plaintiff's motions for injunctive relief. The Court concludes, as did Magistrate Judge Graham, that Plaintiff has failed to demonstrate that a stay is appropriate or that Plaintiff will suffer irreparable harm as required by *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981). (Doc. No. 23 at 4-5.) Moreover, to the extent Plaintiff seeks leave to amend his complaint for a second time, any such motion is properly referred to Magistrate Judge Graham. (*See* Doc. No. 34.) Because Plaintiff's objections do not pertain to the report and recommendation on his motions for injunctive relief, the Court overrules Plaintiff's objections.

Based upon the *de novo* review of the record and all of the arguments and submissions of the parties, and the Court being otherwise duly advised in the premises, the Court hereby enters the following:

ORDER

1. Plaintiff Wendell Dwayne O'Neal's objections (Doc. No. [25]) to Magistrate Judge Jeanne J. Graham's December 5, 2012 Report and Recommendation are **OVERRULED**.
2. Magistrate Judge Jeanne J. Graham's December 5, 2012 Report and Recommendation (Doc. No. [23]) is **ADOPTED**.
3. Plaintiff's Motion for Temporary Injunctive Relief (Doc. No. [5]) is **DENIED**.

4. Plaintiff's First Amended Temporary Injunctive Relief Motion (Doc. No. [11]) is **DENIED**.

Dated: January 15, 2013

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge